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POLICY DEVELOPMENT PROCESS IN THE FINANCIAL SERVICES COMMISSION OF ONTARIO

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I. OVERVIEW

With the proclamation of the *Financial Services Commission of Ontario Act, 1997* (*Act*) effective July 1, 1998, the Ontario Insurance Commission, the Pension Commission of Ontario and the Deposit Institutions Division of the Ministry of Finance are replaced by the new Financial Services Commission of Ontario (FSCO).

This paper outlines the process for policy development under FSCO and highlights the role and participation of external stakeholders and internal parties. The policy development process attempts to maximize external stakeholder participation in order to accurately identify and respond to emerging issues and recommend appropriate policy solutions.

Terms used in this paper are defined as follows:

> the **Superintendent** refers to the Chief Executive Officer and Superintendent of Financial Services;

> the **FSCO Board** refers to the five-member Financial Services Commission of Ontario;

> the **Tribunal** refers to the Financial Services Tribunal; and

> the **Commission** refers to the Superintendent, Board, Tribunal and staff as a whole.

II. PRINCIPLES

The following principles will guide FSCO's policy development process. The process must:

> provide for the interactive involvement of external stakeholders in the identification of issues and in the development and analysis of policy solutions;

> include clear processes for the active involvement of FSCO staff in identifying issues and developing policy solutions;

> provide clear linkages for external stakeholder consultation by developing appropriate mechanisms for consultation;

> operate in an objective, fair, and open manner; and

> be effective and efficient by incorporating processes to identify and prioritize issues, allocate resources and set appropriate time frames.

III. REGULATORY AND LEGISLATIVE POLICY

This paper identifies two forms of policy development: regulatory policy and legislative policy.

For FSCO, **regulatory policy** involves the development of policies, procedures, and interpretations for the ongoing administration of the following legislation for which FSCO is responsible:

- *Insurance Act*, R.S.O. 1990, c.I.8
- *Compulsory Automobile Insurance Act*, R.S.O. 1990, c.C.25
- *Marine Insurance Act*, R.S.O. 1990, c.M.2
- *Prepaid Hospital and Medical Services Act*, R.S.O. 1990, c.P.21
- *Registered Insurance Brokers Act*, R.S.O. 1990, c.R.19
- *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c.M.41
- *Co-operative Corporations Act*, R.S.O. 1990, c.C.35
- *Credit Unions and Caisses Populaires Act*, S.O. 1994, c.11
- *Loan and Trust Corporations Act*, R.S.O. 1990,

c.L.25
- *Mortgage Brokers Act*, R.S.O. 1990, c.M.39
- *Pension Benefits Act*, R.S.O. 1990, c.P.8.

Examples of regulatory policies include: factors to be taken into consideration by the Superintendent in making particular discretionary decisions; procedures for submitting applications to the Superintendent; and the Superintendent's interpretation of particular sections of legislation. In the past, such policies were issued by the Ministry of Finance, the Ontario Insurance Commission, the Superintendent of Insurance or the Pension Commission.

Legislative policy, on the other hand, involves the development of specific legislation, or amendments to legislation, and the development of regulations. The Ministry of Finance has the responsibility for establishing legislative policy.

This paper focuses on the regulatory policy development process within FSCO.

IV. RESPONSIBILITY FOR POLICY DEVELOPMENT IN FSCO

Prior to outlining the proposed regulatory policy development process, it is important to set out the various roles and responsibilities for policy development within FSCO and the Ministry of Finance to understand who is responsible for policy issues and how they will be addressed.

a) Superintendent

The responsibility for establishing regulatory policies within FSCO for the purposes of administering and enforcing the legislation and regulations that it administers rests with the Superintendent. In carrying out these regulatory responsibilities, the Superintendent is responsible for identifying issues and deciding on appropriate regulatory policy solutions.

Within FSCO, a corporate Policy and Communications Branch has responsibility for co-ordinating the identification of

issues, the development of regulatory policy solutions, and communication of new policies on behalf of the Superintendent.

b) FSCO Board

The FSCO Board plays an important role in identifying both regulatory and legislative policy issues by way of its annual statement of priorities and by making specific recommendations to the Minister of Finance.

c) Ministry of Finance

The Ministry of Finance has the responsibility for establishing legislative policy. The Superintendent and FSCO staff maintain a close working relationship with the Ministry of Finance by providing technical advice and support in legislative policy development.

The Superintendent is accountable to the Minister of Finance for the administration of the legislation listed above.

V. FSCO POLICY DEVELOPMENT PROCESS

Based on the principles and responsibilities outlined above, there are four distinct stages of policy development, which are summarized in the attached appendix in Chart 1, FSCO Policy Development Workflow. They are:

1. identification and definition of issues;
2. establishing priorities;
3. development and analysis of options; and
4. decisions on policy solutions.

These four stages are further broken down to detail the roles and responsibilities of internal parties and the participation and consultation with external stakeholders.

a) STAGE 1: IDENTIFICATION AND DEFINITION OF

ISSUES

Policy issues will be identified from internal and external stakeholders, as shown in Chart 2 in the appendix.

EXTERNAL STAKEHOLDERS:

Individuals and groups

External stakeholders who identify issues include such individuals and groups as members of the public, consumer groups, insurers, pension plan members, employers, pension plan administrators, unions, credit unions/caisses populaires, groups and associations, mortgage brokers, financial institutions, co-operatives, professional bodies, etc. Issues will be identified through complaints, concerns, inquiries, and written submissions brought forward to the Minister of Finance, Superintendent and FSCO staff. The Superintendent will then determine whether an issue should be reviewed and its priority, in accordance with FSCO's internal policy development process.

In addition to regular meetings with stakeholder groups, FSCO will host forums with stakeholders in each of the sectors it regulates to discuss emerging issues. These forums will further contribute to the identification of policy issues.

Advisory committees

The advisory committees established by the Ministry of Finance, the Ontario Insurance Commission and the Pension Commission of Ontario, which continue under FSCO, will also identify and bring forward issues through ongoing consultations. The mandate of these committees will continue to include the identification and submission of policy and operational issues to the Superintendent, as well as providing confidential advice on proposed policy solutions.

FSCO Advisory Council

In addition to these committees, a new FSCO Advisory Council has been established. In consultations leading up to the passage of the *Act* and since its implementation, a number of stakeholders expressed interest in establishing such a group. The Advisory Council is a forum consisting of a

balance of representatives of various interest groups through which individual and organizational stakeholders may provide input to FSCO through the Superintendent. The primary role of this group is to advise the Superintendent on FSCO's annual statement of priorities, fees and assessments, and annual budgets. The group may also identify emerging policy issues.

Other jurisdictions

Emerging issues and trends affecting the sectors regulated by FSCO will also be identified in ongoing consultations and discussions with other jurisdictions. For example, FSCO is a member of the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Council of Insurance Regulators (CCIR). Through regular meetings, and various task-specific committees and working groups, issues and emerging trends will be identified by various provincial and federal regulators.

INTERNAL STAKEHOLDERS:

Staff

In addition to external stakeholders, FSCO staff directly involved with the sectors will also identify and refer emerging issues and legislative and regulatory gaps identified in the course of their work. Other branches of FSCO will also serve to identify specific issues or issues common to more than one of the regulated sectors.

FSCO Board

Policy issues may also be identified by the FSCO Board. The Board is the central governance body of FSCO responsible for ensuring that FSCO has adequate staff and resources to enable it to provide regulatory services that protect the public interest. It will identify policy directions by way of an annual statement of priorities to be published nine months prior to the beginning of each fiscal year, and by its recommendations to the Minister of Finance.

Financial Services Tribunal

The Financial Services Tribunal is the independent

adjudicative body that will, on the request of a party, review the Superintendent's proposed decisions or hear appeals from the Superintendent's decisions. As such, the Tribunal does not have a formal role in establishing regulatory policy. Its decisions on cases, however, may identify policy gaps and issues with respect to how regulatory decisions are made by the Superintendent. Decisions from the courts will also have a similar effect.

Ministry of Finance, Financial Services Policy Branch

The Financial Services Policy Branch of the Ministry of Finance will also identify emerging legislative and regulatory issues or issues common to more than one of the regulated sectors.

Ministries other than the Ministry of Finance

Specific issues and concerns may also be identified by provincial ministries other than the Ministry of Finance.

DEFINING REGULATORY POLICY ISSUES

When issues are identified by external stakeholders and internal processes, they will be defined and compiled for the Superintendent by the Policy and Communications Branch of FSCO.

Regular disclosure of issues that have been identified for policy development will be done through requests for comments from external stakeholders. Comments will be sought on these issues as they go through the policy development process. The staff member responsible for a particular issue will be identified so that stakeholders can communicate directly with him or her.

b) STAGE 2: ESTABLISHING PRIORITIES

Based on the need and urgency of issues, the Superintendent will set the priorities in which regulatory policy issues will be addressed, as outlined in Chart 3 in the appendix. FSCO publishes a statement of its priorities in *The Ontario Gazette* on or before July 1 each year. It also publishes a notice at least 60 days before the statement of priorities is published,

inviting written representations on FSCO's priorities from interested persons.

In making decisions about whether to place an item on FSCO's policy agenda, or about an item's priority among many policy agenda items, the Superintendent considers the following:

- the number of stakeholders that may be affected by the issue;
- the significance of the impact upon those stakeholders if a policy change were made;
- the source of the request (e.g., the Minister);
- the impact that starting such a policy initiative will have on existing policies, and on other new policy initiatives;
- the availability of information and resources, internally and externally, to carry out the initiative; and,
- the consequences of taking no action.

c) STAGE 3: DEVELOPMENT AND ANALYSIS OF OPTIONS

The third stage of the policy development process, displayed in Chart 4 in the appendix, is the development and analysis of regulatory policy options.

The development of regulatory policy options will be co-ordinated centrally within FSCO by the Policy and Communications Branch. This process will involve internal participation from staff directly involved in regulation and other FSCO branches. External stakeholders may also be asked to participate in the development of options.

The review of regulatory policy options will involve consultations with external stakeholders. This process will involve the existing advisory committees and other groups. In addition, the Superintendent will use other methods of consultation, such as meetings, the posting of discussion material and proposals on the FSCO website, and the distribution of materials to specific groups, associations, or

parties. This process is crucial for the Superintendent in establishing appropriate, effective and acceptable regulatory policy solutions.

d) STAGE 4: DECISION ON POLICY SOLUTION

I. *Regulatory policy solutions*

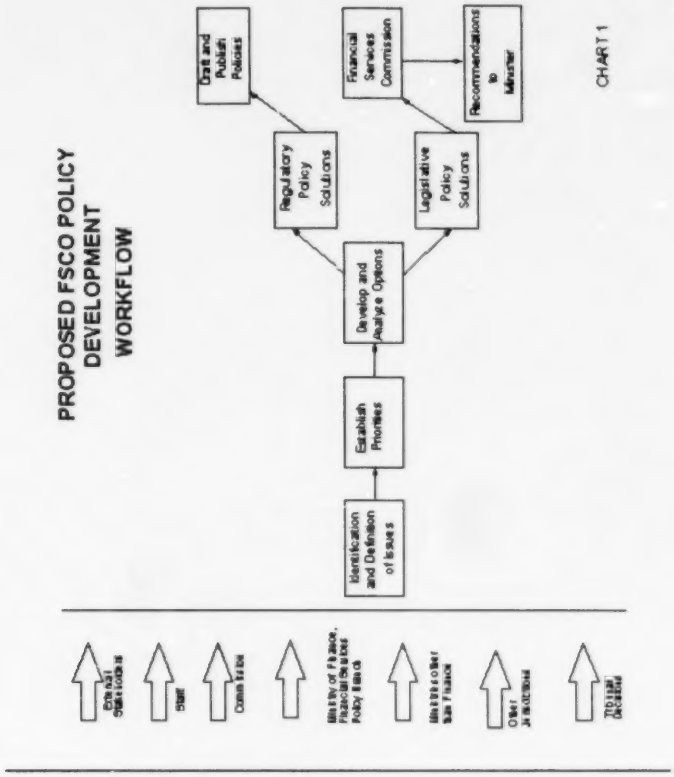
The decision on a regulatory policy solution will be made by the Superintendent taking into account the analysis and recommendations of staff and external consultations.

As outlined in Chart 5 in the appendix, decisions on regulatory policies, procedures or interpretations will proceed directly for final drafting, publication, and communication to all stakeholders. The publication and release of a regulatory policy or procedure may also involve further consultations with external stakeholders on implementation issues, especially those stakeholders who provided input on the issue.

II. *Legislative policy solutions*

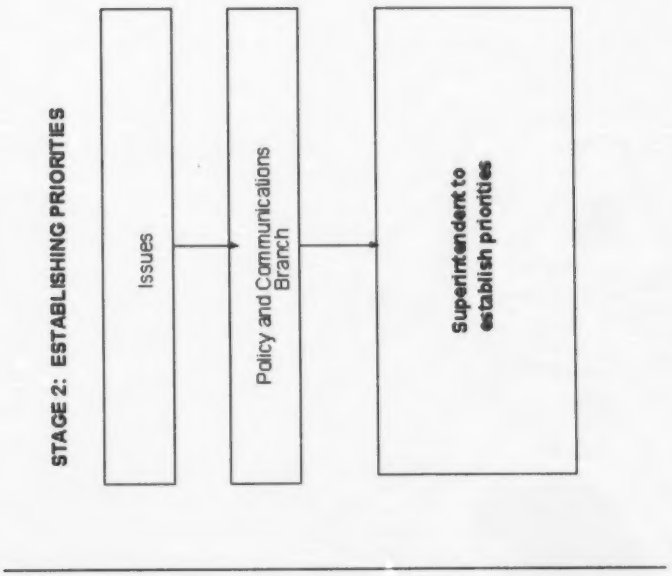
At any stage in the process, policy solutions that involve legislative changes will be referred by the Superintendent to the FSCO Board for recommendation to the Minister of Finance.

APPENDIX


PROPOSED FSCO POLICY DEVELOPMENT WORKFLOW
Identification and Definition of Issues
Establish Priorities
Develop and Analyze Options
Regulatory Policy Solutions
Legislative Policy Solutions
Draft and Publish Policies
Financial Services Commission
Recommendations to Minister
CHART 1

STAGE 1: IDENTIFICATION AND DEFINITION OF ISSUES
EXTERNAL STAKEHOLDERS
> submissions, input from groups and individuals
> FSCO advisory committees
> FSCO Advisory Council
> concerns and complaints from consumers, the public, insurers, pension stakeholders, credit unions/caisses populaires, mortgage brokers, financial institutions, co-operatives, professional organizations, etc.
> forums
STAFF
MINISTRY OF FINANCE, FINANCIAL SERVICES POLICY BRANCH
MINISTRIES OTHER THAN FINANCE
COMMISSION
FSCO TRIBUNAL DECISIONS
> court decisions
OTHER JURISDICTIONS
IDENTIFICATION AND DEFINITION OF ISSUES
> Coordinated centrally within FSCO by Policy and Communications Branch
CHART 2

CHART 3


STAGE 2: ESTABLISHING PRIORITIES
Issues
Policy and Communications Branch
Superintendent to establish priorities

STAGE 3: DEVELOP AND ANALYZE OPTIONS
Staff involved in regulation, other FSCO branches, Ministry of Finance
Internal participation and review
Develop and analyze options
External consultation on options and analysis
» FSCO advisory committees
» associations, groups etc.
» FSCO website
» Coordinated centrally within FSCO through the Policy and Communications Branch
CHART 4

STAGE 4: DECISION ON POLICY SOLUTION
Communicate and Publish
Recommendations to Minister
Consultation on Implementation
Draft Policy, Procedure, or Interpretation
Financial Services Commission
Regulatory Policy Solutions
Legislative Policy Solutions
Decision on Policy Direction
Superintendent to decide policy solution based on analysis and consultations
Legislative policy solutions referred to Commission for recommendation Minister
CHART 5